LOCAL GOVERNMENT SERVICES DIVISION

*Municipal Services Branch*

## SOLVING INTERMUNICIPAL DISPUTES

# WORKING THROUGH THE MEDIATION PROCESS

Alberta
MUNICIPAL AFFAIRS

*This booklet is the second in a series on* TWO of TWO *mediation as a method of conflict resolution.*

# Mediation can make solutions happen...

**Mediation is a conflict resolution process that involves a neutral third party. It's the mediator's job to facilitate discussions between parties in a dispute. The goal is to arrive at a mutually acceptable solution with all parties.**

**The key to successful mediation is preparation. This booklet provides information on the mediation process and how to prepare for it.**

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## STEP ONE

# ASSESSMENT/PREPARATION

### *Assessment*

Determining whether mediation is appropriate requires that all the parties involved undertake a detailed assessment.

The primary objective is to make sure that:

(1) the right people and organizations are involved in the mediation process;

(2) everyone at the table is comm .ted to developing a solution;

(3) the proper framework for the decision making process is in place.

***Questions to ask to assess whether mediation is right for you at this time:***

**What is the current situation?**

- ☐ is there a need for a speedy resolution to the dispute?
- ☐ has the current dispute been characterized by poor communication and distrust?
- ☐ will the sharing of information lead to the possibility of a better understanding of the issues involved?

**How important are the other parties?**

- ☐ do you need them in order to implement a solution?
- ☐ will you be having future interactions with them that would be helped by the establishment of a trusting working relationship?

**What are the issues involved?**

- ☐ are there issues related to this dispute which fall outside the purview of an administrative tribunal or the courts?
- ☐ is there a likelihood that neither party would get what they want if the dispute went before a tribunal/courts?
- ☐ by going to mediation am I able to address issues which might not be addressed by an administrative tribunal or the courts?

**What are the underlying interests of the parties?**

- ☐ is there room for compromise and creativity?

**The Mediator Asks:**

- Are the right parties involved in the discussions?
- Do the parties have a clear understanding of what is under discussion?
- Do the parties have a good knowledge of negotiation strategies?
- Where is the most appropriate place to hold the session?
- Is there a need for a third party facilitator?
- Is there a commitment from the parties to an initial meeting?

**At This Stage, The Parties Should Ask Themselves:**

- What are the options for the other parties?
- How important is an ongoing relationship?
- Who will represent us? (See Appendix A)
- Is there organizational support (including time and money) for this effort?
- What do I need to know about the other parties before we go to the table?
- What options are available if negotiation fails?

**What is the best we could hope to achieve without negotiating?**

- ☐ if we do not participate in this negotiation what is the best solution that we could potentially hope for? what is the likelihood of that occurring?

**What is the worst we would achieve if we did not negotiate?**

- ☐ if we do not participate in this negotiation what is the worst solution that could result? what is the likelihood of that occurring?

**Does the Municipal Government Act require us to attempt mediation?**

If you feel you are ready to proceed, you can either:

- approach the other parties and propose mediation, encouraging them to undertake a similar assessment; or
- invite Alberta Municipal Affairs mediation staff to assist you in inviting the other parties to the table.

All the parties must have an opportunity to ratify the person selected to mediate the dispute.

Alberta Municipal Affairs staff are available to assist the parties in selecting a private sector mediator (see Appendix B).

## *Preparation*

Once the decision has been made to use mediation, it is important that time be spent ensuring that the necessary conditions are in place.

With the assistance of a mediator or an Alberta Municipal Affairs staff member, the parties will be asked to confirm the following questions:

- **are all the stakeholders supportive of the process and willing and able to participate?**
- **do the municipal councils support the process and are sufficient resources committed to it?**

The mediator helps the parties decide:

- who is going to be our lead negotiator?
- what will the internal lines of communication be?
- who has to know about what and when?

- **is the senior administrative decision maker aware of the process being entered into and are they supportive of it?**
- **will all participants be involved in establishing and agreeing to the ground rules?**
- **has the sponsoring agency ensured the facilitator's neutrality and accessibility to all parties?**
- **will the participants be involved in planning for implementation of the agreement from the beginning of the process?**
- **are the necessary financial and time resources available to get the job done?**
- **do the parties have the necessary training to be effective negotiators?**

Answering 'yes' to these questions confirms that the necessary conditions are in place to proceed.

In some cases the mediator(s) will spend time with individual parties to ensure that they are prepared for the negotiations. This includes getting them to focus on interests rather than positions.

STEP TWO

# CONVENING THE PARTIES

## *Getting The Negotiations Going*

To begin the process, the mediator calls a meeting with all the parties to finalize the mediation framework agreement (see Appendix C).

This meeting also confirms:

- the timeframe available
- the agreement to mediate
- who the mediator(s) will be
- rules of behaviour
- the willingness of all parties to negotiate
- the subject matter of the mediation.

The framework agreement is signed by all the participants. On occasion a separate contract is signed with the mediator(s) detailing rates, roles, etc. (a sample contract is provided in Appendix E in this booklet.)

**At This Stage, The Mediator:**

- Ensures that the agreement to mediate is in place.
- Ensures that the ground rules have been established. (see Appendix C)
- Ensures that the parties have agreed to proceed.
- Ensures that the appropriate negotiation training has been completed, if required.

**At This Stage, The Parties Should Ask Themselves:**

- What ground rules have to be in place for me to feel comfortable with this process? (see Appendix C)
- Do all the parties and the mediator understand the timelines I am under?
- Am I clear as to who in my organization has to approve any final agreement?
- Do the other parties understand this as well?
- Am I committed to attend the necessary meetings?
- Who will my backup be?
- Do we agree with the selection of the mediator?

**A carefully crafted framework eliminates problems later on in the mediation process.**

## STEP THREE

# IDENTIFYING THE PROBLEM

### *What's The Real Problem?*

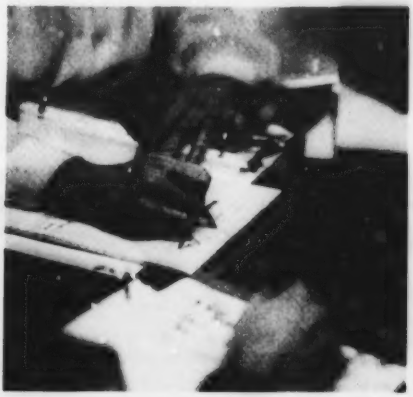
Participants move towards identifying all the issues that need to be addressed to reach a final solution. What issues will have to be addressed for the problem to be resolved? The issues identified make up the agenda. At this stage, *quantity counts*! It is important to get all the issues on the table. Do not pass judgment on or evaluate the issues — and be honest. Remember you are not giving evidence to a judge or an arbitrator. If mediation is to work, you have to participate fully and respect the process.

**At This Stage, The Mediator:**

- Provides each party with clear, uninterrupted time to explain their issues;
- Lists the issues so that everyone can see them;
- Discourages the parties from passing judgement on the issues as they are presented;
- Summarizes what has been said and emphasizes common issues;
- Frames and collates the issues so that they become the mutual agenda for the group.

**At This Stage, The Parties:**

- Can clearly describe their issues to the others; (See Appendix D)
- Listen to the issues of the other parties;
- Ask questions for clarification;
- Remember that if it is an issue for one of the parties, it becomes an issue for all.



**It is important to get as many issues on the table as possible. Evaluating or judging the issues presented is not recommended.**

STEP FOUR

# IDENTIFYING INTERESTS & DATA

### *What Are The Parties Saying?*

At this stage, parties identify the interests that underlay the positions that each group has taken on the issue. Having a clear understanding of the interests is critical to developing the final solution.

### *Determine Required Data*

Once the parties have completed this task, they will have to identify a process that will provide them with the information needed to develop solutions.

In some cases this can involve jointly selecting a consultant to undertake studies and provide required information. In other cases it could be a simple agreement to use data that one of the parties already has. It must be remembered that whatever data is used, its credibility and acceptability to all the parties must be above question.

**At This Stage, The Mediator:**

- Allows each party an opportunity to articulate uninterrupted what their *interests* are, as opposed to their *positions*;
- Seeks to assist the parties in identifying their interests;
- Works to ensure that the parties have a clear understanding of the others' interests;
- Summarizes all the interests and identifies the common interests of the parties.

**At This Stage, The Parties:**

- Reflect on what is really important to them in this dispute;
- Articulate to the other parties what is important to them;
- Listen carefully and when necessary seek to clarify and get a better understanding of the interests of the other parties.
- Identify what data do we need?
- Identify who can supply the information?

**The mediator's job is to listen carefully and serve as a sounding board. Mediators assist the parties in reaching a fully informed, voluntary agreement. Voluntary compliance and long-term satisfaction are the hallmarks of excellent agreements. A good agreement is one where both sides feel they got a fair shake. A good mediator will take things slowly and work out the details. In the long run, this is by far the best approach.**

## STEP FIVE

# IDENTIFYING SOLUTIONS

### *What Are The Options?*

The tendency in any group is to immediately evaluate options as they are put on the table. While there is some merit to doing an immediate check to see if there is an obvious solution available, it is important to avoid anything that might reduce the creation of options. If a quick fix is not available, the group should take the time needed to brainstorm and develop more options. By brainstorming, the group can be creative, allowing for a maximum number of options to surface. Once the list of options has been generated, evaluate each option and do some reality testing. Ask your yourself, how do these options meet our interests?

The final package will contain three elements:

1. *the substantive components of the solution;*
2. *an implementation plan;*
3. *an alternate dispute resolution process for use, should disagreements arise during implementation and subsequent operations.*

Once the group has evaluated all the options, and ensured that all their interests are addressed, a final package is put together. This package reflects the differing interests of all the participants and includes a detailed implementation plan. Implementation is a crucial component of the package, how and when the various items are implemented can be deal breakers. Careful consideration must also be given to the design of the subsequent dispute resolution process should roadblocks emerge over time.

**At This Stage, The Mediator:**

- Works with the parties to ensure that the necessary technical information is available;
- Guides the parties through a brainstorming exercise to identify potential options;
- Works with the parties to develop evaluation criteria and then assist them in evaluating each option;
- Ensure that each party 'reality tests' the potential solution to determine whether or not it can be implemented;
- Works with the parties to develop an implementation strategy, including the who will do what when;
- Develops a conflict resolution strategy with the parties to deal with unforeseen problems that could emerge in the future.

**At This Stage, The Parties Ask Themselves:**

- What solution options exist?
- What independent criteria can we use to evaluate the options?
- Can this deal be sold to our constituents?
- What can we do to help the other party sell it to their constituents?
- What implementation requirements exist?
- Does the implementation plan address all my issues?

## APPENDIX A

# Choosing Your Representative

The mediation process seeks to reach a consensus on a course of action that meets the needs and interests of all involved parties. This joint effort is considerably different from appearing before a court or tribunal. In a consensus process the parties craft the solution; in a judicial process the judge or arbitrator renders a decision. Different decision making processes require different skills.

In coming before a judge or a tribunal your primary concern is to convince the decision maker of the merits of your case and to dismiss the other party's case. This approach calls for an individual who is skilled in presenting the facts, and only the facts, that support your position.

A consensus based mediation process requires effective two-way communication. Joint crafting of a resolution requires that all parties have a clear understanding of each others issues and interests. This requires participants who are effective listeners and are committed to developing a solution which addresses all interests.

Parties will normally set up a negotiating team consisting of a lead representative and an alternate. Support personnel may or may not be part of the team.

**Parties are encouraged to choose an individual who is:**

- an effective listener
- able to separate personalities from the problem to be solved
- able to check out and overcome assumptions
- seeking resolution to the larger picture over domination by your own groups or other groups' view of the issues
- prepared to commit the necessary time to the process
- committed to an outcome that is mutually acceptable to all the parties and sufficiently accomplishes the interests of the group he or she represents
- looking for ways to get beyond the positions that all groups take
- imaginative in crafting solutions to bring about the interests of the group being represented
- a good communicator with own constituency and is able to explain emerging solutions in terms of how they satisfy the group's needs.

**prepared by Gordon Sloan, nationally recognized mediator and trainer**

**When you are satisfied with the credentials of the mediator(s), check their references. Once retained, the mediator will work with the parties to draw up an agreement to mediate. This agreement, signed by the parties outlines the process and procedure guidelines, as well as fees, which will direct the mediation. A sample agreement is provided in Appendix E.**

# APPENDIX B

## What To Look For In A Mediator

Generally, all parties to a dispute are involved in selecting the mediators. It is not uncommon for parties who are considering the use of mediation to use a *mediation team*. A team provides a number of advantages. After all, two sets of eyes and ears are better than one. Two mediators also means you have a wider set of skills at your disposal.

Referrals can be obtained from Alberta Municipal Affairs' roster of qualified private sector mediators, The Alberta Arbitration and Mediation Society, or the Canadian Dispute Resolution Directory on the internet at www.nicr.ca.

### What to ask

The following questions are designed to assist you in choosing a mediator who best fits your needs. The questions are broken down into five categories:

#### Training

- ☐ What training do you have?
- ☐ Have you been involved in ongoing professional development?

#### Experience

- ☐ What experience do you have?
  (Does the mediators' past track record indicate that he or she has the experience necessary to conduct this mediation?)
- ☐ If you don't have substantive knowledge in these issues, how would you handle this deficit?
- ☐ Can you give us some examples of cases/situations similar to this one that you have worked in?

#### Personal Attributes

- ☐ Have you signed/ endorsed a code of ethics?
- ☐ Can you describe your style as a mediator?

**Also note:**
Are they a good listener and communicator?
Do they demonstrate integrity and honesty?
Is the mediator free of any previous involvement in the dispute, can they function independently?

#### Process

- ☐ Who is responsible for meeting logistics, preparing agendas, keeping meeting notes?
- ☐ What expectations do you have of each of the parties?
- ☐ Can you explain the process that you intend on using?

**Also note:**
Can the mediators work together as a team?

#### Fees

- ☐ What do you charge for your services? How much will this process cost? Is there a way in which we can keep costs down? How much time will it take?
- ☐ Do you have separate rates for travel time?
- ☐ Is the same rate charged for preparation as for the actual mediation?

**Also Note:**
The Alberta Arbitration and Mediation Society advises that the fee schedule ranges from $100 per hour for a mediator with limited experience to $200 per hour for an experienced, senior mediator.

## APPENDIX C

# Mediation Framework Worksheet

It is the group's responsibility to develop a ground rules, or process framework document, to ensure that the process will work for them.

In order to prepare for that discussion, we would ask that you reflect on the following points. What concerns will the ground rules need to address in order for you to be comfortable in the process?

They could be:

- I'm afraid the group will get bogged down with...
- These processes are always unfair because of...
- I need to be assured that I will be heard and respected.
- What would happen if they did...

The agreement generally includes the following items.

- Purpose of the group (why we exist, the task at hand)
- Structure (the use of observers or alternates)
- Timelines
- Decision making process
- Confidentiality
- Media contact
- Expenses
- Meeting procedures
- Definitions of consensus

What suggestions do you have for each item? What other items should be added?

## APPENDIX D

# Issues Worksheet

In order to assist groups in delineating the scope of their discussions, it is important that everyone at the table understands what the issues are. At this point in the process, parties are invited to share their issues with the others involved. To assist in this exercise, the mediator can ask the parties to prepare an "Issues Paper".

The Issues Paper is developed by each parties' negotiating team. It's an opportunity for those in dispute to reflect on the issues that are important to them. Each party is given the opportunity to present their paper and everyone is given the opportunity to seek clarification of the issues that are raised.

The following guidelines are provided to assist the parties in preparing their Issues Paper.

- The paper should answer the following question:
  *What are the specific issues related to the problem under discussion that we want addressed during this process?*

- The negotiating team should ensure that the issues paper receives the necessary endorsement.

The Issues Paper is presented by the organization's lead representative to the negotiations. Mediator(s) are available to assist the parties in preparing the document.

# APPENDIX E

# Sample Contract

This agreement is made between

_____

*Mediator*

and

_____

*Parties*

**Purpose:**

1. This agreement governs the terms and conditions of mediation.

**What The Mediator Will Do:**

1. The Mediator agrees to help the Parties discuss the matters in dispute between them, assist the parties in communicating and negotiating as effectively as possible, and assist the parties in reaching a settlement of the dispute.
2. The mediator also agrees to keep confidential:
   - *discussions in the mediation proceedings; and*
   - *all documents generated for the purpose of reaching a settlement of the dispute.*
3. The Mediator's agreement to keep matters confidential does not apply if the Mediator is required by law to disclose the discussions or documents, or if the parties both agree in writing that the Mediator can disclose all or part of the discussions or documents.

**What The Mediator Will Not Do:**

Mediation is a process of facilitated negotiations and accordingly:

- the Mediator will not make decisions for the parties;
- nor will the Mediator provide legal or other technical advice to the parties.

**Fees and Expense:**

1. The Mediator's fees will be charged at the rate of $__per hour for telephone discussions, preparation, meetings, mediation sessions and follow-up work.
2. All expenses incurred by the Mediator will be paid by the parties. Expenses could include fax messages, messenger costs, long distance telephone calls, travel accommodation, meal costs and word processing.
3. The parties agree to each pay _____ of the Mediator's fees and expenses, plus G.S.T.

Dated in _____

On_____, 1999.

Signed

_____

Signed

_____

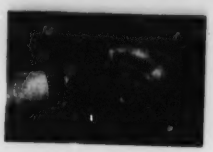
Signed

_____

# Notes

# Notes

## Intermunicipal Dispute Resolution Initiative



Alberta Municipal Affairs' Intermunicipal Dispute Resolution Service encourages the use of mediation. Mediation provides municipalities with the greatest degree of flexibility possible to develop solutions which meet unique local interests. The initial focus of the department is on reconciling the interests of the municipalities, eliminating the need to argue the case before an appeal board or court.

The department encourages face–to–face negotiation between municipalities and can assist in designing dispute resolution systems which can be incorporated into intermunicipal plans. The department can also help obtain the services of qualified private sector mediators to assist in resolving a dispute.

Employing a mediator does not preclude any of the parties from pursuing other means of dispute resolution. If so inclined, parties can proceed to a hearing by the Municipal Government Board, the courts, or other means of dispute resolution.

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